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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GUADALUPE OCHOA PEREZ,
Plaintiff,
vs.
IRS,
Defendant.

CASE NO. 12-CV-2026 BEN (NLS)

ORDER:

**(1) DISMISSING ACTION
WITHOUT PREJUDICE**

**(2) DENYING AS MOOT MOTION
TO PROCEED *IN FORMA*
*PAUPERIS***

**(3) DENYING AS MOOT MOTION
TO APPOINT COUNSEL**

[Docket Nos. 2, 3]

On August 16, 2012, *pro se* Plaintiff Guadalupe Ochoa Perez filed a Complaint against the Internal Revenue Service ("IRS"). (Docket No. 1.) Plaintiff also filed a motion to proceed *in forma pauperis* (Docket No. 2) and a motion to appoint counsel (Docket No. 3). The Court decides the matters on the papers submitted. For the reasons outlined below, the Court **DISMISSES** the action without prejudice and **DENIES** as moot Plaintiff's motion to proceed *in forma pauperis* and motion to appoint counsel.

BACKGROUND

The Complaint appears to allege that an IRS employee unlawfully refused to assist Plaintiff in preparing a tax form. The Complaint reads, in its entirety:

1 [illegible] of IRS San Diego employer new supervisor to assist [sic] filing form assisting
 2 in correcting administrative error by IRS. Refuse assist [sic] fill form to be present case
 3 tax court San Diego refuse to assist [sic] in filing for prior year 1988 = refile because
 error to pay for IRS for that year.

4 (Compl. at 1.)

5 DISCUSSION

6 I. *SUA SPONTE* SCREENING AND DISMISSAL

7 A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under
 8 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and dismissal if the complaint is
 9 frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief
 10 from a defendant immune from suit. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-
 11 27 (9th Cir. 2000).

12 The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6).
 13 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate
 14 if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S.
 15 544, 556-57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation
 16 that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the
 17 complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534
 18 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the
 19 light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill*
 20 *v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). *Pro se* litigants are not “excused from
 21 knowing the most basic pleading requirements.” *Am. Ass’n of Naturopathic Physicians v. Hayhurst*,
 22 227 F.3d 1104, 1107 (9th Cir. 2000).

23 Here, Plaintiff does not cite any legal basis for the cause of action. Although Plaintiff alleges
 24 that an IRS employee unlawfully refused to assist Plaintiff in preparing a tax form, Plaintiff does not
 25 cite any law requiring IRS employees to assist members of the public in preparation of their tax forms,
 26 nor is the Court aware of any. Accordingly, the Complaint lacks a cognizable legal theory. The
 27 Complaint is, therefore, **DISMISSED WITHOUT PREJUDICE**.

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1 **II. MOTION TO PROCEED *IN FORMA PAUPERIS* AND MOTION TO APPOINT COUNSEL**

2 Because Plaintiff's Complaint is dismissed, Plaintiff's motion to proceed *in forma pauperis*
3 and motion to appoint counsel are **DENIED** as moot.

4 **CONCLUSION**

5 For the reasons stated above, the Complaint is **DISMISSED WITHOUT PREJUDICE**.
6 Plaintiff is granted leave to file an amended complaint that corrects the deficiencies outlined above.
7 Any such amended complaint must be filed no later than **November 1, 2012**. If Plaintiff chooses to
8 file an amended complaint, Plaintiff is encouraged to write as legibly as possible.

9 The motion to proceed *in forma pauperis* and motion to appoint counsel are **DENIED** as moot.
10 If Plaintiff wishes to renew the motion to proceed *in forma pauperis* or the motion to appoint counsel,
11 Plaintiff must file a new motion to proceed *in forma pauperis* and motion to appoint counsel along
12 with an amended complaint.

13 **IT IS SO ORDERED.**

14 DATED: September 17, 2012


HON. ROGER T. BENITEZ
United States District Judge